

Appl. No. 09/862,830
Docket No. AA471
Reply to Office Action mailed on March 8, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1, 2, 31, and 34 – 42, as last amended in the June 5, 2006 amendment by Applicants, are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 U.S.C. § 103(a) Over Cheok in view of Vinson, and further in view of Trinh

Claims 1, 2 and 31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,746,353 to Cheok *et al.* (hereinafter “Cheok”) in view of U.S. Patent No. 6,015,781 to Vinson *et al.* (hereinafter “Vinson”), and further in view of U.S. Patent No. 5,207,933 to Trinh *et al.* (hereinafter “Trinh”). This rejection is traversed for two reasons. First, the cited documents fail to support a *prima facie* case of obviousness because they do not teach or suggest all of the elements of Claim 1. Second, the obviousness argument is overcome by the showing of unexpected results from the attached January 17, 2008 George Kevin Morgan Declaration under 37 C.F.R. § 1.132 (hereinafter “Morgan Declaration”). Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.

The cited documents fail to teach or suggest the coordinated element of a perfume.

At the onset, Applicants wish to thank the Examiner for her thorough analysis of the present application. Applicants, however, respectfully submit that the rejection of claims 1, 2 and 31 should be withdrawn because Cheok in view of Vinson, and further in view of Trinh does not teach or suggest the use of perfume as a coordinating element. *See* claim 1.

Claim 1, as last presented in Applicants’ Amendments dated June 5, 2006, recites:

A kit for caring for a fabric article comprising:

(a) a laundry detergent composition provided in a separate laundry detergent composition container,

wherein the laundry detergent container is either a cardboard box or bottle, and

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wherein the cardboard box further comprises a scoop or measuring cup;
wherein the bottle further comprises a pour spout; and
(b) a fabric treatment composition provided in a separate fabric treatment composition container, the fabric treatment composition comprises either:
 (i) a liquid fabric conditioning composition applied to the fabric article during the rinse cycle,
 wherein the fabric treatment composition container for the liquid fabric conditioning composition comprises a bottle
 (ii) or a dryer sheet composition,
 wherein the fabric treatment composition container for the dryer sheet composition comprises a box; and
wherein the laundry detergent composition and the fabric treatment composition comprise the following coordinated element: a perfume.

To establish a *prima facie* obviousness, all the claim elements must be shown to be taught or suggested by the prior art reference. *See In re Royka*, 490 F.2d 981 (C.C.P.A. 1974); MPEP § 2143.03. Furthermore, references relied upon to support a rejection under 35 U.S.C. § 103 must provide enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 606 F.2d 303 (C.C.P.A. 1979).

The Office Action of March 8, 2006 at page 3 alleges that, "Cheek teaches a portable laundry detergent system which is divided into three holding containers, one for liquid detergent, one for powdered detergent and one for liquid fabric softener, and the center back compartment is a storage compartment for a measuring cup and other laundry accessories." The Office Action goes on at page 4 to allege that:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to fill the holding containers of the dispensing system of Cheek with a powdered or liquid laundry detergent composition of Vinson which contains perfume like aldehydes or patchouli and a liquid fabric softener of Trinh '933 which contains perfume like aldehydes or patchouli because . . . the perfume of Vinson and Trinh '933 being similar would have provided a consistent, additive and/or synergistic odor on a treated fabric article.

Applicants respectfully disagree because the cited documents fail to teach or suggest the use of perfume as a coordinating element. *See Claim 1*. The Office Action attempts to

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support this rejection with the assertion that "the perfume of Vinson and Trinh '933 being similar would have provided a consistent, additive and/or synergistic odor on a treated fabric article." See Office Action at page 4. The perfumes cited by the Office Action include aldehydes and patchouli for the liquid laundry detergent of Vinson and aldehydes and patchouli for the liquid fabric softener of Trinh.

Applicants submit that the present invention provides for surprising benefits including additive and synergistic effects obtained by using perfume as a coordinated element. The Supreme Court of the United States has set forth that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739 (2007). The Court then explains that "a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 1740. The Court goes on to require that, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinnings to support the legal conclusion of obviousness." *Id.* at 1741.

Applicants respectfully submit that the Office Action fails to meet the requirements set forth in *KSR*. Applicants submit that the combinations of elements recited in the present invention yield more than predictable results.

[T]he use of such a kit may provide one or more improved fabric care results, such as improved cleaning, whitening, softness, malodor elimination, perfume fragrance retention and release, color retention, stain removal, ease of ironing, static reduction, etc. Such benefits may be especially significant and noticeable after multi-cycle application to the same fabric article. In addition, as the multiple products therein are sold together as a fabric care kit, the present invention may significantly reduce consumer confusion regarding synergistic fabric care combinations. Furthermore, such a fabric care kit may reduce undesirable cross-reactions and interactions between incompatible ingredients.

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See specification at page 3, lines 3 – 13. Further, “[t]he perfume useful herein as a coordinated element may be a single perfume, or a combination of perfumes which provide a consistent and/or synergistic odor for the multiple products herein. The perfume in each of the multiple products herein is coordinated so as to be aesthetically compatible with each other. For example, the perfume in the multiple products may be coordinated to provide an additive effect as each product is applied to the fabric article.” See specification at page 16, lines 30-35. Applicants submit that the combinations of elements in the present invention are non-obvious because they yield more than a predictable result because use of perfume as a coordinated element provides benefits beyond those which can be expected from the Vinson and Trinh compositions which disclose a broad range of perfumes without teaching or suggesting the use of perfume as a coordinating element.

Moreover, Applicants submit that the Office Action fails to provide sufficient articulated reasoning to support the allegation of obviousness in light of the requirements set forth by *KSR*. Applicants respectfully submit that although Vinson and Trinh disclose aldehydes and patchouli as perfumes, the allegation of why it would have been obvious to arrive at the present invention is not supported by facts or evidence in the record. Applicants submit that this allegation is tantamount to a taking of official notice of a fact.

MPEP § 2144.03(A), addressing the procedure for relying on common knowledge or taking official notice, states that: “[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where facts asserted are well known are not capable of instant and unquestionable demonstration as being well-known.” (Emphasis in original.) Indeed, MPEP § 2144.03(A) goes on to state that “an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support.” MPEP § 2144.03(B) continues to set forth that if Official Notice is taken, the Office Action “must provide scientific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” MPEP § 2144.03(C) goes on to state that where the applicant “adequately traverses the examiner’s assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.”

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Applicants respectfully submit that the Office Action's allegation that "the perfume of Vinson and Trinh '933 being similar would have provided a consistent, additive and/or synergistic odor on a treated fabric article" is tantamount to taking Official Notice of a Fact because no documentary evidence is provided to support this statement. Further, Applicants submit that the Office Action's allegations are unsupported because the mere disclosure of aldehydes and patchouli for use in Vinson and/or Trinh fails to teach or suggest the coordinated element of the present invention. Aldehydes are a broad class of chemicals suitable for many uses and that patchouli is an ingredient suitable for use with many types of perfumes. Applicants aver that the perfumes relied upon by the Office Action encompass a broad range of different perfumes which if used as suggested by the Office Action may not achieve the additive and synergistic benefits obtained by the present invention. Thus, Applicants submit that the present obviousness rejection relies upon allegations tantamount to an Official Notice of a Fact. Applicants submit that this Official Notice has been traversed. As such, this rejection should be withdrawn.

In light of the foregoing, Applicants submit that a *prima facie* case of obviousness has not been sufficiently established. As such, Applicants request this rejection to be withdrawn.

The Morgan Declaration establishes Unexpected Results

Even if a *prima facie* case has been established, the presumption of obviousness has been overcome by a showing of unexpected results.

The Morgan Declaration is sufficient to establish unexpected results to rebut the alleged *prima facie* case of obviousness. The expert opinion of the declarant is that:

Surprisingly, it was found that laundering a fabric with a Coordinated Perfume provides the surprising benefits of both additive and synergistic effects shown by:

1. Achieving a higher initial dry fabric odor (hereinafter "DFO") and with less DFO loss over time (See FIGURE 1 below), and
2. Achieving lower DFO loss over time as i) a % of week to week DFO loss and ii) a % of total DFO loss from the initial DFO (See FIGURES 2 and 3, respectively).

These benefits are indeed surprising because one of ordinary skill in the art would not expect a fabric laundered with the Coordinated Perfume to maintain such a relatively high amount of DFO compared to a fabric laundered without the Coordinated Perfume. One of ordinary skill in the art would likely expect that the Coordinated

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Perfume would result in the same rate if not a higher rate of DFO loss because the Coordinated Perfume had a higher initial DFO. One would naturally expect the higher initial DFO to result in a more drastic and noticeable loss of perfume odor when measured over a two week period. To our surprise, not only did the Coordinated Perfume have higher initial DFO with lower units of perfume loss over time, but the % of DFO loss was also lower than the other runs.

Surprising benefits of additive effects and synergistic effects obtained:

The **additive effects** of laundering a fabric with the Coordinated Perfume in Run A are shown by the increased DFO measurements compared to Runs B, C and D. As in FIGURE 1, Run A has a higher initial DFO than Runs B, C and D. Run A has an initial DFO of 46.5 odor units, whereas Run B had an initial DFO of only 40 odor units, Run C has an initial DFO of only 26.5 odor units, and Run D has an initial DFO of 15 odor units. Further, the Coordinated Perfume's additional DFO measurements remain higher than those of Runs B, C, and D, after the first week and after the second week.

The **synergistic effects** of the Coordinated Perfume are demonstrated by Run A's lower rates of DFO loss when compared to Runs B and C. For the purpose of this analysis the rate of DFO loss was calculated as a week to week % DFO loss (FIGURE 2) and as a % of total DFO loss (FIGURE 3). The week to week % DFO loss was calculated by determining the number of odor units lost for a given week, then dividing by the DFO from the prior week. The % total DFO loss was calculated by determining the number of odor units lost for a given week from the initial DFO, then dividing by the initial DFO. Importantly, not only does the Coordinated Perfume have a higher DFO throughout the testing but also lost less odor units at a lower % when compared to Runs B and C.

See Declaration at pages 3 – 4 (emphasis in original).

MPEP § 2144.08 states that "Rebuttal evidence may also include evidence that the claimed invention yields unexpectedly improved properties of properties not present in the prior art. Rebuttal evidence may consist of a showing that the claimed compound possesses unexpected properties. *Dillon*, 919 F.2d 692-93, 16 USPQ2d at 1901. A showing of unexpected results must be based on evidence, not argument or speculation."

Applicants submit that the attached Morgan Declaration establishes that it would not have been obvious to arrive at the present invention because of the surprising additive and synergistic benefits demonstrated by the present invention. The Morgan Declaration provides evidence showing that the present invention, comprising perfume as a coordinating element, provides unexpected and surprising results of having the additive effect of increasing initial

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dry fabric odor after laundering as well as increased dry fabric odor over time. Moreover, the declaration shows how the relative % of dry fabric odor decreased at a lower rate over time as compared to the test runs which were conducted without perfume as a coordinating element.

Further, Applicants submit that the perfume odor behavior over time of the present invention is unexpected and surprising. In particular, FIGURE 2 shows how the dry fabric odor for the fabrics laundered in accordance with the present invention decreased at a lower rate than the other test runs in a week to week analysis. Further, FIGURE 3, shows how the dry fabric odor for the fabrics laundered in accordance with the present invention decreased at a lower rate as a % of the initial dry fabric odor when compared to the other test runs. As stated in the declaration, the expert opinion of the declaration is that these benefits were indeed surprising. Indeed, Applicants submit that these surprising benefits establish that the present invention yields unpredictable and unexpected results, establishing non-obviousness in accordance with *KSR*. The benefits obtained by using perfume as a coordinating element are shown by the Morgan Declaration to be more than the predictable results one of skill in the art would have expected.

Applicants submit that the attached Declaration provides evidence of unexpected and surprising results provided by the present invention. Applicants submit that the alleged *prima facie* case of obviousness has been overcome, and that the rejection should be accordingly withdrawn.

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Rejection Under 35 U.S.C. § 103(a) Over Vinson in view of Trinh

Claims 1, 2, and 34 – 42 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Vinson in view of Trinh. This rejection is traversed for same reasons as set forth above regarding the rejection under 103(a) over Check in view of Vinson, and further in view of Trinh. First, the cited documents fail to support a *prima facie* case of obviousness because they do not teach or suggest all of the elements of Claims 1, particularly failing to teach or suggest the coordinated element of the perfume. Second, the obviousness allegation is overcome by the showing of unexpected results in the attached Morgan Declaration. Thus, the present invention is unobvious and that the rejection should be withdrawn.

With regard to all claims not specifically mentioned, these are believed to be allowable not only in view of their dependency on their respective base claims and any intervening claims, but also for the totality of features recited therein.

All claims are believed to be in condition for allowance. Should the Examiner disagree, Applicants respectfully invite the Examiner to contact the undersigned agent for Applicants to arrange for a telephonic interview in an effort to expedite the prosecution of this matter.

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CONCLUSION

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the above mentioned rejections. Early and favorable action in the case is respectfully requested. Should any additional fees be required, please charge such fee to Procter & Gamble Deposit Account No. 16-2480.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Ronald Terk Sia

Registration No. 58,871
(513) 627-6379

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Customer No. 27752